G.R.S. 57.]

Legs **File No.** 15 of 1908-09

Serial Nos. 1–5

190 8-09

GENERAL AND REVENUE SECRETARIAT.

(Legislation)

Subject Amendment of Section 3 of the Mysore Chief Court Regulation

Part A: Manuscript
for January 1910.

1–5

Serial Nos. ~~1–4~~

Table of Contents

Serial No.

1 No. 2222/108 dated 30/9/08: From the Registrar Chief Court
Requests that the definition of "Full Bench" in Section 3 of the Mysore Chief Court Regulation be amended by substituting the words "not less than three Judges of the Chief Court" for the words "All the Judges of the Chief Court"

2 No Pol. 328 dated 7th Oct: 09 to the ~~P.A. Resident~~ First Asst to the Hon'ble the Resident in Mysore
Requests him to obtain the sanction of the Government of India for the Bill to amend the Chief Court Regulation being passed into law

3. No 7932 dated the 15th Dec: 09 from the First Asst to the Hon'ble the Resident
Conveys the sanction of the Government of India

C.P.B.—5,000—20-8-06.

G.R.S. 11]

1908-09

GENERAL AND REVENUE SECRETARIAT.

(Legislation

NOTES.

File No. 15-08

FILE HEADING.

Amendment of Section 3 of the Mysore Chief Court Regulation

From The Registrar, Chief Court of Mysore

No. 2222/108 Dated 30.9.08 Received

Diary No. 9868	Enclos.	Spare Copies.	Serial No. 1.

BRIEF ABSTRACT OF LETTER.

Requests that the definition of "Full Bench" in section 3 of the Mysore Chief Court Regn be amended by substituting the words "not less than three judges of the Chief Court" for the words "All the judges of the Chief Court"

NOTES AND ORDERS.

~~Submitted~~ - There were only three judges in the Chief Court, but there are now four and in a Full Bench as now constituted, there may be no majority which necessitates the amendment

NOTES—First sheet.

GPB.-30,000—20-3-06.

Serial No.

proposed by the Chief Court -

Submitted for orders.

C.R.D

1.10.08 The present number of Judges makes it necessary that the Amendment should be made. The Chief Court want the Amendment to be passed before the 13th. ~~If there is another meeting~~ In the Ordinary course, the Amendment would have to be placed before the Legve Council. If, however there is no meeting of the Council after the 15th & before the 13th, I would submit that, if necessary, the Amending Regulation may be passed by Govt. under Section 15 of the Legislative Council Regulation

(under Secy)

SRM 1.10.08

3. Submitted with a draft Regulation. Instead of passing the Regn under Sec 15 of the Legve Council Regn a special meeting of the Legve council may be held & the Regn passed, the Rules of Business being suspended.

When I informally mentioned the matter yesterday Sir [illegible] this course [illegible] Sir [illegible]

NOTE—Contn sheet

21/10/08

GPB—50 000—17-3.07

Serial No.

4 The only indispensable formality is to notify the date & place of meeting in the Gazette & as the ordinary Gazette is not issued next week a Gazette extraordinary will have to be issued.

(Secy)

C&B
3/10/08

5 I am of opinion that no such amendment of Regln is immediately necessary. A fourth Judge was only appointed as a very temporary measure "until further orders." Now that further orders will shortly be passed appointing Mr Letton as acting third Judge, the original temporary arrangement (involving the necessity for 4 Judges) will come to an end; & a full Bench will consist of three Judges as heretofore. This may be pointed out to the Chief Court in reply to the letter under appeal.

December 1907

Wood
3/10/08

C&B

6. I am inclined to agree with the Secy's opinion above stated

2 And the

× In the absence from the 18th Oct. 1908

3/M

8414
3-10-08

NOTE—Contn sheet.

GPB—50 000—17-3-07

G. R. S. 12]
General and Revenue
Secretariat.

File No. of 190

Serial No.

legislation proposed by the Chief Court, I regret I am unable to agree in any proposal to enact the measure through the Legislative Council - I for one would like to prepare myself by a study of the law & practice in analogous cases elsewhere, for it is a serious thing to decree that a full bench need not be strong with the full strength of the Court -

Dewan's add.

This matter is urgent. Please bring up at an early meeting of Council

Complete circulation

Seen

3/11/08

To be brought up at yesterday's Council meeting when I was asked to [redacted] Main information as to the rule and practice in

NOTE—Contn sheet.

GPB—50 000—17-3-07

G. R. S. 12]
General and Revenue Secretariat.

File No. of 190

Serial No.

other Provinces in India in regard to the Composition of a Full Bench -

Mr Rajagopalachari will please put up a note

4-11-22

9 ## The Composition of a Full Bench in the High Courts is fixed by rules made by the High Court under the letters patent and the High Courts Act (24 & 25 Victoria Cap. 104) The rule in the Calcutta High Court is." A Full Bench appointed for any of the purposes mentioned in Chapter V. Rules I to to V (References to Full Bench) shall consist of five Judges" Belchambers, Appellate Side Rules p. 8. The total number of Judges in the Calcutta High Court is about 13 Therefore all refers to Full Benches are heard by a Court consisting of five Judges only. In Madras, the rule is: " A Full Bench shall be a Bench of any no. of Judges not less than three of the Judges for the time being present as Judges of the Court ". Rule 5 High Court Rules. In practice, what obtains in the Madras High Court is this When any reference is made to a Full Bench

The present strength of the Madras High Court is 8 SRK

GPB—50 000—17-3-07

Serial No.

by a Division Bench, the Registrar obtains the orders of the Chief Justice as to the number of Judges who are to compose the Full Bench. In unimportant cases, the Full Bench generally consists of three Judges In important cases or where a contrary opinion is held in the other High Courts or where a previous Full Bench decision has to be overruled, the Chief Justice generally orders that five or more Judges may sit as a Full Bench Court The Law reports show that, in practice, only odd ~~number of Judges~~ a Full Bench is composed of an odd number of Judges.

In Allahabad also, the a Full Bench consists generally of three Judges; and the practice, so far as my information goes, is similar

W. ~~P~~ It is clear, however that, in no High Court in India, does a Full Bench mean "all the Judges of the Court" A Full Bench generally consists of three Judges in Madras Allahabad & Bombay & ~~in~~ two Judges in Calcutta. I have not been able to obtain information about the Chief

NOTE—Contn sheet.

GPB—50 000—17-3-07

Serial No.

Courts of Burma and the Punjab

SPH 9.11.08

Secy

1a Is it the rule anywhere that the Chief Justice or chief judge should always be on the Full Bench?

(If you have no instr., you may look up some Full Bench decisions, & see what the composition of the Bench was)

(H. Wr)
SPH

1b There seems to be no rule that the Chief Judge should always be on the Full Bench. From reference to the volumes of law reports for some years the following information has been gathered.

		No. of Full Bench cases.	No. of cases in which C.J. presided
Calcutta	1901	2	all
	1902	10	
	1903	7	
	1904	8	
Madras	1900	5	1
	1901	2	1
	1902	8	7
	1903	13	9
Bombay	1902	1	1
	1903	1	1
	1904	1	—
	1905	3	3

NOTE—Contn. sheet.

GPB—50,000—18-5 08

G. R. S. 12]
General and Revenue Secretariat.

Leg File No. 15 of 1908-09

8

Serial No.			
	Allahabad	1900.	10 8
		1901.	4 4
		1903	C.J. presides in all cases.
		1904	7 - 7.

The tendency seems to be for the C.J. to preside in all or a majority of full bench cases.

C.A.B. 13/11/08

9

13.

C532 / 1611 ~~Read~~ Read to Govt. No. 1612-C.V.

~~X~~ Now that Mr Sellar has again been appt. an acting Judge, it is necessary to proceed with the consideration of the amendment proposed by the Chief Court.

The question that arose at the ~~Last~~ meeting of Council was whether, in a Court of 4 Judges, it was not desirable that all the Judges should constitute the Full Bench, or at least that the Chief Judge should be a member of every Full Bench. If approved, the opinion of the Chief Court may be unofficially obtained & the matter then finally considered in Council -

Since 5th Dec 1908 for 1 year.

14

H A third alternative is

C.A.B. 16/4

NOTE—Contn. sheet.

GPB—50,000—13-5-08

G. R. S. 12]
General and Revenue
Secretariat.

Leg File No. 15 of 1908

10

Serial No.	
	objects and reasons to be revised with reference to the representation since obtained in the bill & Statt. of objects & reasons have to be published in the gazette Leg 21.11.08
17	Let me have a statt in a day or two 25.11.08
17	Submitted with a Bill & a Statement of Objects & Reasons (under sec 4) Leg 26.11.08
18	Leg Please table next placing Bill after circulating it among the Commrs. P. S. the Secretary in charge 27/11/08 Leg. I believe & introduce the Bill 27/11/08
	Please circulate the bill & Statt of Objects & Reasons Leg 27.11.08
19	I am humbly of the opinion that in view of the manner in which the Chief Court in Burma is recruited, the Full Bench should have the advantage of the Chief Judge being one of the Judges of the Full Bench - 27 Nov 08

NOTE—Contn. sheet.

GPB—50,000—13-5 08

G. R. S. 12]
General and Revenue Secretariat.

File No. 15 of 1908

Serial No. 10

There are many points in favour of the proposal to make the Chief Judge one of the three Judges composing the Full Bench. The measure will be greatly appreciated by the public. Such a Bench will have added prestige from the fact of the Chief Judge being one of the judges sitting as a Full Bench. In British Indian Courts the Chief Justice generally presides over the Full Bench but it is just as well to make the obligation Statutory. I would support the Suggestion made by the Ld Counsellor under date 27th inst.

28/5/08

Would be seen as this is a scheduled matter & has to be submitted to Members before action is taken

28/5/08

Brought up at Council Meeting & decided to be referred to the Chief Justice.

5/6/08

NOTE.—Contn. sheet.

G.P.W.—50,000—12-5-08

Serial No.

The question whether it is not desirable that the Chief Judge of the Chief Court should be a member of every Full Bench is referred unofficially to the Chief Judge for favour of opinion.

By order

Mchandrasekhara

5-12-08

See 4 b Jud

SRA 5.12.08

23.

Every Full Bench will be constituted under the orders of the Chief Judge and in every case of importance he would form one of the members. In the opinion of the Chief Court it is not necessary to embody this in the proposed amendment.

Submitted

11-12-08

Regr. Chief Ct.

Submd

SRA 12/12

Sec 14

12.12.08

Circulated to Council Secy & Secy.

17 Nov

24

The opinion of the Chief Court may be accepted

Seen. The question is one of

18/12/08

(Continued on page 15)

NOTE—Contn. sheet.

GPB—50,000—13-5-08

13

12

Submitted to His Highness.

28 — 29 The Chief Court have suggested an amendment of the definition of 'Full Bench' occurring in section 3 of the Mysore Chief Court Regulation of 1884 by substituting the words "Not less than three Judges of the Chief Court" for the words "All the Judges of the Chief Court". This is necessary as there are at present four Judges and in a full bench as now constituted there may be no majority. A draft bill with a statement of objects and reasons has accordingly been prepared.

26 — 30 The First Councillor has suggested that the Chief Judge should be a member of every full bench. Such a statutory provision does not however exist in British India and the Chief Court also think that it is unnecessary to embody such a provision in the amendment, as every full bench will be constituted under the orders of the Chief Judge and in every case of importance he will be one of the members. Both the Second Councillor and I agree in this view.

27 31. If approved, the draft bill will be placed before the Legislative Council after consulting the Hon'ble the Resident in the matter.

28/12/1908

14
15

Record of Cases submitted for the Orders of His Highness the Maharaja.

Subject.

25.12.08
482

Sanction to place the draft bill to amend the Mysore Chief Court Regulation of 1884 before the Legislative Council after consulting the Hon'ble the Resident.

481

Order.

28
~~KRW~~
26/12/08

Seen
4/1/09

Seen
4/1/09

27/12/08

with a copy of the D.O. written to the F. A. Read 1.1.09

Circulated to Cis from 15 letters

(1)

No C. Ens 2

Camp Bathamangla
30th December 1908

Camp Srivilliputtur 1.1.09.

Dear Mr. Copeland,

I send herewith for the information of the Honorable the Resident the draft of a Bill to amend the Mysore Chief Court Regulation, 1884, with a statement of objects and reasons - The amendment proposed is in regard to the de-finition of "Full Bench" wh. now means a Bench of all the Judges of the Chief Court - As there are now four Judges on the Chief Court it is intended to define a "Full Bench" as a bench consisting of three Judges only -

I propose to place the bill before the Legislative Council in due course -

Yours Sincerely
Sd V. P. Madhava Rao

Copy

1012

Serial No.

(Contd from page 12)

of Governmental Policy - Ref of Law - Ref recd

11305
19.12.08 (continue page 13)

Le 6 Jan 09.

His Highness's assent cannot be accorded to the proposed amendment. The bill will have to be replaced now before the Legislative Council There is no time to do so.

29 The Secretary has directed that leave may be taken to introduce this bill at the meeting of the Leg'l Council to be held on the 8th inst. 1st Councillor has Consented to move the Bill. Have the necessary Gazette addition to the Statement of business issued at once.

Le 6 Jan 09.

Put up necessary intimation forms

(73)

Seen
18/1/09

Seen
19/1/09

GPB—50.000—18-5-08

G. R. S. 12]
General and Revenue Secretariat.

Leg File No. 15 of 1908-09

17

Serial No. 30

Leave was given to introduce the Bill before the Legislative Council at the meeting held on the 9th January 1909. It was introduced and read at the meeting held on the 2nd Sept 1909. and was considered and finally adopted by the Council thereat. The Bill has now to be forwarded to the Govt of India for sanction being obtained for promulgation as law. Draft of a letter to the Residency is accordingly submitted for approval.

15/9/09 SN 15/9 6

Please keep typed Copy of the draft as revised

15/9/09 SH

Submitted with a typed Copy

SN 20/9

21/9/09 SH

Dewan through 2nd C

23/9/09

Should this go to the Govt of India? If the question is already a settled one, the draft may be submitted to the Dewan

2705 29.9.09 24/9/09

Yes. All necessary amendments have red the sanction of Sophia

27/9

27/9/09

Draft approved

NOTE—Contn. sheet.

Sd/- S. SUBRAMANIAM.

MGPB—50.000—13-5-08

C. 108
28. 10. 08

GENERAL AND REVENUE SECRETARIAT.

COUNCIL MATTER.

SUBJECT.

Amendment of Section 3 of the Mysore Chief Court Regulation so as to provide for the definition of a Full Bench include not less than three Judges of the Chief Court.

Refer to chief Justice -

Circulated to Councillors.

By Order,

Secretary.

28th Oct. 1908.

C 832
16-11-08

T. ANANDA ROW, Esq., B.A.,
First Councillor.

Seen by the Councillor.

K. P. PUTTANNA CHETTY, Esq.,
Second Councillor.

11037
29.11.08

C 43
24/9/09

Put it up to Secretaries of Full Board -

G. R. S. 12]
General and Revenue Secretariat.

Leg File No. 15 of 1908

(17/18)

Serial No.	
	24 June 1909 Early Sd 4/10/09.
2	To the G. A. Resident in Mysore, Pol. 328 of 7th Oct. 09. Requests him to obtain the sanction of the Govt of India for the Bill to amend the Cheif Court Regulation being passed into law.
3	From the same No. 7532 of the 7th Decr. 09. Conveys the sanction of the Govt of India to the above Bill and requests that a Copy of the amending Bill as passed into law may be forwarded to his office for information.
33. Leg. page 12	33. The Bill has been finally adopted by the Legislative Council. The Sanction of H.H. the Maharaja has now to be obtained for the Bill being promulgated as law. Submits 2 Copies of the Bill as approved by the Residency. The Dewan's signature conveying the assent of H.H. the Maharaja to the Bill has also to be obtained (Rule 52 of the Leg (Cl) Rules).
R. 4.	No 16/12/09 SW 16/12 24 Submitted to Dewan 16/12/09 Sd
357.4 17.12.09	

NOTE—Contn. sheet.

GPB—50.000—13-5-08

(19

Submitted to His Highness.

35

With reference to His Highness' order dated 26th December 1908, the bill to amend Section 3 (definition of Full Bench) of the Mysore Chief Court Regulation of 1884, was considered and adopted by the Legislative Council on the 2nd September 1909. The Government of India have sanctioned the amendment in Residency letter No.7932 dated 15th December 1909. His Highness' sanction may be accorded for promulgating the bill into law.

y

Paper under disposal

29

T. Ramdas
29 Dec 09

(20

Record of Cases submitted for the Orders of His Highness the Maharaja.

Subject.

29.12.09
725

Sanction for promulgating the bill to amend section 3 of the Mysore Chief Court Regulation I of 1884, into law.

428

Order.

Sanctioned
KRW
30/12/09

687
31.12.09

31/12/10

31/12/10

4/1/10

4/1/10

G. R. S. 12]
General and Revenue
Secretariat.

File No. of 190

Serial No.

Draft of award directing the publication of N.S.R. in the Gazette is sent for approval. Copies of the Regulation will be forwarded to the Residency after spare copies are received from the Press.

SW 5/1/10 SW 5-1-10 - 38 may issue

5/1/10

Issue

5/1/10

5/1/10

A Rec 12-1-10

To be kept for the Copies

Spare copies of the Regulation are kept in the Gazette Office. Copy of Gazette No. 9 dated 15th January 1910 sent.

Draft of the publication of the Rules in the Gazette as Regn IV of 09.

350 Spare Copies of the Regn as published in the Gazette have been received. 100 of these will be kept here, 100 each sent to the Resident for the Cannanore & Laccadive Copies have to be forwarded to Residency with usual spare Copies. Draft sent for approval.

Issue

19/1/10 SW 19/1/10

21/1/10

Rec 1-2-10

NOTE—Contn. sheet.

GPE—53,000—27-4-09

R. S. 12.]
eneral and Revenue
Secretariat.

Legis File No. 15 of 1908-09

Serial No.	
5	No. Pol: 678 dated 25/1/10
	to the H.H. Resident
	Forwards a copy of the Bill passed into law as Regn. III of 1909 with 9 spare copies and to request that a copy may as usual be forwarded to H.H. the Nizam's Govt.

NOTE—Contn. sheet

GPB—55,000—27-4-09

Chief Court of Mysore, Bangalore.

Dated the 30th September 1908.

From

V.A. Rajaratna Mudaliar Esq.,

Registrar, Chief Court of Mysore.

To

K.S. Chandrasekhara Aiyar Esq.,

Secretary to Government,

General & Revenue Departments.

Sir,

I am directed to request that the definition of 'Full Bench' in section 3 of the Mysore Chief Court Regulation 1884 be amended by substituting the words 'Not less than three Judges of the Chief Court' for the words 'All the Judges of the Chief Court'. There are now four Judges and in a Full Bench as now constituted there may be no majority.

I am to request that the matter may be treated as urgent and the amendment passed with as little delay as possible as a reference to the Full Bench is posted for the 13th proximo.

I have the honor to be,

Sir.

Your most obedient servant,

V. Rajaratnam

Registrar.

S.R.

(2

Legis 15-08 The F. A Resident in
Sec: 2 Mysore.
Pol: No 328.
Ecm: 1. of 7-10-09.

I am directed to forward herewith a copy of a Bill further to amend the Mysore Chief Court Regulation I of 1884, and to observe as follows:-

Under section 3 of the said Regulation, the term "Full Bench" ~~has been~~ defined as a Bench consisting of all the judges of the Chief Court. Lately, when it was found expedient to appoint a fourth judge as a temporary measure some difficulty was apprehended ~~experienced in hearing~~ and in a head of the 4 judges cases before a full Bench, as it was feared that if the judges were equally divided in their opinion on any point there would be an impasse, as neither this Regulation nor the existing Code of Civil Procedure would solve the difficulty. The provisions contained in the earlier part of Section 575 of the Code of Civil Procedure which requires a decree to be affirmed when there is no majority which concurs in modifying

(3

or reversing would have been sufficient but the last paragraph added to that section in 1892 by Regulation VII of 1892 -- giving preference to the provisions of the Chief Court Regulation (Section 15 clause 3) in cases of conflict, rendered this nugatory. The difficulty did not however actually occur as three judges happened to concur in the case, ~~which has led to this proposed amendment~~. Some of the High Courts in British India which consist of a much larger number of judges than the Chief Court ~~are satisfied with~~ have laid down three as the minimum number required to constitute a Full Bench . The Durbar consider it expedient to adopt this provision so that if, any future contingency, the number of judges is increased, there might be a provision in the Statute Book which would prevent ~~the recurrence~~ the occurrence of the difficulty referred to above.

2. I am to add that the Bill was placed before the Legislative Council and was ~~finally~~ adopted by that body at the meeting held on the 2nd September 1909.

3. I am now to request that the sanction of the Government of India may be obtained for the Bill being passed into law.

I have &c.

Secretary.

scs

(5

Bill to amend the Mysore
Chief Court Regulation, 1884.

Whereas it is expedient further to amend the Mysore Chief Court Regulation 1884; ~~in certain respects~~ His Highness the Maharaja is pleased to enact as fol-lows:-

1. The following shall be substi-tuted for the last paragraph of section 3, viz.,

" Full Bench " means a Bench consisting of not less than three Judges of the Chief Court.

(6

Statement of Objects

and Reasons.

Under orders passed by Govern

-ment in Notification No.J.1408/Cts.114

-08-2 dated 18th November 1908 the --

Chief Court ~~now~~ will for some time to come consists of four Judges.

Section 3 of the Mysore Chief Court Re-

gulation,1884, defines a "Full Bench"

as a Bench consisting of all the Judges

of the Chief Court. This definition of course

will

causes a practical difficulty, ~~in the~~

~~present circumstances~~ as in a Full

Bench of four Judges, there may not be

a majority to decide any point on which

~~any~~ a difference of opinion exists among

the members of the Bench.

In the High Courts in India,

a Full Bench is not composed of all the

Judges of the courts but of five Judges

in Calcutta and not less than three

Judges

(7

Judges in the other High Courts. It is therefore proposed to amend the section by defining a Full Bench as a Bench consisting of three Judges.

27 Mar 62

Collected 1503

No. 7932

From

T. B. C o p e l a n d, Esq., I.C.S.,

First Assistant to the Resident in Mysore.

To

The Dewan of Mysore.

Bangalore, dated the 15th December 1909.

Sir,

With reference to Mr. Chandrasekhara Iyer's letter No.328-Pol., dated the 7th October 1909, forwarding a draft bill to amend the Mysore Chief Court Regulation I of 1884, I am --- directed to state that the draft Bill has been sanctioned on the understanding that the Governor General in Council retains with regard to it the power and authority vested in him by Art. 19 of the Instrument of Transfer.

2. I am to request that a copy of the amending Regulation as passed into law may be forwarded to this office for -- information.

I have the honour to be,

Sir,

Your most obedient servant,

T C Copeland

First Assistant Resident.

K.M.

(9

G.R.S. 28]

File No. 15-09

Serial No. 4

Diary No. of letter replied to ———

Proceedings of the Government of His Highness the Maharaja of Mysore.

GENERAL AND REVENUE SECRETARIAT

( )

~~READ~~.

, *the* 190

Date of issue 5-1-10

Signed by Dr S Varadarajaiya

ORDER ~~THEREON~~.—No. J 1828 / Legis 15-09

Ordered that the accompanying Regulation for the to amend the Mysore Chief Court Regulation 1884, which received the assent of His Highness the Maharaja on the 30th December 1909 be promulgated for general

over

5/1/10

SUBJECT

MGCPB—20,000—24-2-05

10

Information

SD

To Legislative

with a Copy of Part III of 1908

The Compiler, Ordinances, for publication in the Gazette in English & Canarese & for supply of 350 English & 100 Canarese spare Copies of the Ordinance to this office. Canarese translation will follow.

Part III

The translation received from Mysore.

20 SW 5/1/10 5/1/10

Recd SW 5/1/10

7/1 1912

11

G.R.S. 26]

25/1/10 ab 3845

Legis File No. 15 of 1908
Serial No. 5

*Diary No. of letter replied to

Pol. No. 598
Secs: 10

General and Revenue Secretariat
( )
, the 190

To The Secretary Mysore Banglore

Sir

Date of issue 25-1-1910

Signed by

Hon: C.S. Balasundaramiyer

Adverting to your letter No. 7532 dated the 15th Dec 1909 conveying the decision of the Govt. of India to the draft Bill further to amend the Mysore Christian Const Regn. 1884 and as desired in para 2 thereof, I am directed to forward herewith 6 copies of the Bill passed into Law as Regulation No. IV of 1909 with 6 spare copies and to request that 6 copies may as usual be forwarded to the Nizam's Govt.

I have &c.

Sd/- R. Seg

over.

SUBJECT.

Sec
Ker

SN

ngd SN

1908-09

GENERAL AND REVENUE SECRETARIAT.

(JUDICIAL AND LEGISLATIVE)

LEGISLATION.

NOTES.

FILE No. 15 of 1908-09.

Amendment of Section 3 of the Mysore Chief Court Regulation.

1. *From the Registrar, Chief Court of Mysore, No. 2222—108, dated 30th September 1908.*

Requests that the definition of "Full Bench" in Section 3 of the Mysore Chief Court Regulation be amended by substituting the words "not less than three Judges of the Chief Court" for the words "all the Judges of the Chief Court."

1. There were only three Judges in the Chief Court, but there are now four and in a Full Bench as now constituted, there may be no majority, which necessitates the amendment proposed by the Chief Court.

Submitted for orders.

C. R. D.
1-10-08.

2. The present number of Judges makes it necessary that the amendment should be made. The Chief Court want the amendment to be passed before the 13th. In the ordinary course, the amendment would have to be placed before the Legislative Council. If, however, there is no meeting of the Council after the 1st and before the 13th, I would submit that, if necessary, the Amending Regulation may be passed by Government under Section 15 of the Legislative Council Regulation.

Under-Secretary.

S. P. R.
1-10-08.

3. Submitted to Secretary with a Draft Regulation. Instead of passing the Regulation under Section 15 of the Legislative Council Regulation a special meeting of the Legislative Council may be held and the Regulation passed, the rules of business being suspended.

4. The only indispensable formality is to notify the date and place of meeting in the Gazette, and as the ordinary Gazette is not issued next week, a Gazette Extraordinary will have to be issued.

Secretary.

C. S. B.
3-10-08.

5. I am of opinion that no such amending Regulation is immediately necessary. A fourth Judge was only appointed as a very temporary measure "until further orders." Now that further orders will shortly be passed appointing Mr. Setlur as acting third Judge with effect from the 13th October 1908, the original temporary arrangement (involving the necessity for four Judges) will come to an end; and a full bench will consist of three Judges as heretofore. This may be pointed out to the Chief Court in reply to the letter under disposal.

Dewan through 1st Councillor.

K. S. C.
3-10-08.

6. I am inclined to agree with the Secretary's opinion above stated.

2. As to the legislation proposed by the Chief Court, I regret I am not able to agree in any proposal to rush the measure through the Legislative Council. I for one would like to prepare myself by a study of the law and practise in analogus cases elsewhere, for it is a serious thing to decree that a full bench need not be strong with the full strength of the Court.

T. A. R.
3-10-08.

K. S. C.
3-10-08.

Dewan's Order.

7. This matter is urgent. Please bring up at an early meeting of Council.

K. M.
25-10-08.

8. Brought up at yesterday's Council meeting, when I was asked to obtain information as to the rule and practice in other Provinces in India in regard to the composition of a full bench.

Mr. Rajagopalachari will please put up a note.

K. S. C.
4-11-08.

9. The composition of a full bench in the High Courts is fixed by rules made by the High Court under the letters Patent and the High Courts Act (24 and 25 Victoria C. 104). The rule in the Calcutta High Court is, "A full bench appointed for any of the purposes mentioned in Chapter V Rules I to V (references to full bench) shall consist of five Judges." Belchambers, Appellate Side Rules, page 8. The total number of Judges in the Calcutta High Court is about 13. Therefore all references to full benches are heard by a Court consisting of five Judges only. In Madras, the rule is: "A full bench shall be a bench of any number of Judges *not less than three** of the Judges for the time being present as Judges of the Court." Rule 5, High Court Rules. In practice, what obtains in the Madras High Court is this: when any reference is made to a full bench by a division bench, the Registrar obtains the orders of the Chief Justice as to the number of Judges who are to compose the full bench. In unimportant cases, the full bench generally consists of three Judges. In important cases or where a contrary opinion is held in the other High Courts or where a previous full bench decision has to be overruled, the Chief Justice generally orders that five or more Judges may sit as a full bench Court. The law reports show that, in practice, a full bench is composed of an odd number of Judges. In Allahabad also, a full bench consists generally of three Judges; and the practice, so far as my information goes, is similar.

* The present strength of the Madras High Court is 8.
S. P. R.

10. It is clear, however, that in no High Court in India does a full bench mean, "all the Judges of the Court." A full bench generally consists of three Judges in Madras, Allahabad and Bombay and of five Judges in Calcutta. I have not been able to obtain information about the Chief Courts of Burma and the Punjab.

Secretary.

S. P. R.
9-11-08.

11. Is it the rule anywhere that the Chief Justice or Chief Judge should always be on the full bench? (If you have no information, you may look up some full bench decisions, and see what the composition of the bench was.

K. S. C.
11-11-08.
S. P. R.
11-11-08.

12. There seems to be no rule that the Chief Judge should always be on the full bench. From reference to the volumes of Law Reports for some years the following information has been gathered :—

		Number of Full Bench cases	Number of cases in which Chief Judge precided
Calcutta	1901 ...	2	All
	1902 ...	10	
	1903 ...	7	
	1904 ...	8	
Madras	1900 ...	5	1
	1901 ...	2	1
	1902 ...	8	7
	1903 ...	13	9
Bombay	1902 ...	1	1
	1903 ...	1	1
	1904 ...	1	...
	1905 ...	3	3
Allahabad	1900 ...	10	8
	1901 ...	4	4
	1903 ...	Chief Judge presided in all cases.	
	1904 ...	7	7

The tendency seems to be for the Chief Judge to preside in all or a majority of full bench cases.

C. S. B.
13-11-08.

13. Resubmitted to Dewan through 1st Councillor.

Now that Mr. Setlur has again been appointed an Additional Judge, it is necessary to proceed with the consideration of the amendment proposed by the Chief Court.

The question that arose at the meeting of Council was whether, in a Court of 4 Judges only, it was not desirable that all the Judges should constitute the full bench, or at least that the Chief Judge should be a member of every full bench. If approved, the opinion of the Chief Court may be unofficially obtained and the matter then finally considered in Council.

K. S. C.
16-11-08.

C. S. B.
16-11-08.

14. A third alternative is to give the Chief Judge a casting vote when all the four Judges sit and they are equally divided in opinion.

T. A. R.
19-11-08.

15. This is impracticable. Please take the opinion of the Chief Court. By the bye I don't see the necessity for their being consulted, pelase bring in an amendment and say that a Full Bench shall consist of three Judges. Say nothing about whether the Chief Judge should be on it or not.

V. P. M.
21-11-08.

16. The Dewan desires that steps may be taken to have the bill *introduced* at the next meeting of the Legislative Council. The statement of objects and reasons has to be revised with reference to the information since obtained. The bill and statement of objects and reasons have to be published in the Gazette

K. M.
21-11-08.

Let me have bill and statement in a day or two.

K. S. C.
25-11-08.

17. Submitted with a bill and a fresh statement of objects and reasons.

Under-Secretary.

S. P. R.
26-11-08.

Secretary.

C. S. B.
26-11-08.

Legislation.—

18. Please take needful action to publish bill after circulating it among the Councillors.

K. S. C.
27-11-08.

P. S.—The Councillor in charge of Courts and Legislation is, I believe, to introduce the bill.

To 1st Councillor.

K. S. C.
27-11-08.

19. I am humbly of the opinion that in view of the manner in which the Chief Court in Mysore is recruited, the Full Bench should have the advantage of the Chief Judge being one of the Judges to sit as a Full Bench.

T. A. R.
27-11-08.

20. There are many points in favor of the proposal to make the Chief Judge one of the three Judges composing the Full Bench. The measure will be greatly appreciated by the public, such a bench will have added prestige from the fact of the Chief Judge being one of the Judges sitting as a full bench. In British Indian Courts, the Chief Justice generally presides over the full bench but it is just as well to make the obligation statutory. I would support the suggestion made by the 1st Councillor under date 27th instant.

K. P. P.
28-11-08.

Resubmitted to Dewan as this is a scheduled matter and has to be submitted to His Highness before action is taken.

K. S. C.
28-11-08.

21. Brought up at yesterday's Council Meeting and ordered to be referred to the Chief Judge for opinion.

K. S. C.
5-12-08.

22. The question whether it is not desirable that the Chief Judge of the Chief Court should be a member of every full bench is referred unofficially to the Chief Judge for favor of opinion.

By order,
K. S. CHANDRASEKHARA AIYAR,
Secy. to Govt., Gen. & Rev. Depts.
5-12-08.

S. R. C.
5-12-08.

23. Every full bench will be constituted under the orders of the Chief Judge and in every case of importance he would form one of the members. In the opinion of the Chief Court it is not necessary to embody this in the proposed amendment.

V. A. RAJARATNA MUDALIAR,
Registrar, Chief Court.
11-12-08.

24. The opinion of the Chief Court may be accepted.

K. P. P.
18-12-08.

Seen. The question is one of Governmental policy, not of law.

T. A. R.
19-12-08.

Submitted to His Highness.

25. The Chief Court have suggested an amendment of the definition of 'full bench' occurring in Section 3 of the Mysore Chief Court Regulation of 1884 by substituting the words "Not less than three Judges of the Chief Court" for the words "All the Judges of the Chief Court." This is necessary as there are at present four Judges and in a full bench as now constituted there may be no majority. A draft bill with a statement of objects and reasons has accordingly been prepared.

26. The First Councillor has suggested that the Chief Judge should be a member of every full bench. Such a statutory provision does not, however, exist in British India and the Chief Court also think that it is unnecessary to embody such a provision in the amendment, as every full bench will be constituted under the orders of the Chief Judge and in every case of importance he will be one of the members. Both the Second Councillor and I agree in this view.

27. If approved, the draft bill will be placed before the Legislative Council after consulting the Hon'ble the Resident in the matter.

V. P. M.
23-12-08.

28. *Order.*

K. R. W.,
H. H. the Maharaja of Mysore.
26-12-08.

No. C. Enclosures 2.

Camp Bethamangala, 30th December 1908.

Camp Srinivaspur, 1st January 1909.

Dear Mr. Copeland,

I send herewith, for the information of the Honorable the Resident, the draft of a Bill to amend the Mysore Chief Court Regulation, 1884, with a statement of objects and reasons. The amendment proposed is in regard to the definition of "full bench" which now means a Bench of all the Judges of the Chief Court. As there are now four Judges on the Chief Court it is intended to define a "Full Bench" as a bench consisting of three Judges only.

I propose to place the bill before the Legislative Council in due course.

Yours Sincerely,
Sd. V. P. Madhava Rao.

4th January 1909.

29. Secretary has directed that leave may be taken to introduce this bill at the meeting of the Legislative Council to be held on the 8th instant, 1st Councillor has consented to move the bill. Have the necessary addition to the statement of business issued at once.

S. H.
4th January 1909.

Seen.

H. V. N.
18-4-09.

Submitted

30. Leave was given to introduce the bill before the Legislative Council at the meeting held on the 8th January 1909. It was introduced and read at the meeting held on the 2nd September 1909, and was considered and finally adopted by the Council thereat. The bill has now to be forwarded to the Government of India for sanction being obtained for promulgation as law. Draft of a letter to the Residency is accordingly submitted for approval.

T. K. S.
15-9-09.
S. N.
15-9-09.

Please keep typed copy of the draft as revised.

S. H.
15-9-09.

31. Dewan through 2nd Councillor.

32. Should this go to the Government of India? If the question is already a settled one, the draft may be submitted to the Dewan.

H. V. N.
24-9-09.

Yes. All previous amendements have received the sanction of the Government of India.

C. S. B.
27-9-09.
S. H.
27-9-09.

Submitted to Dewan. Draft approved.

Issue.

K. S. C.
2-10-09.

Early.

S. H.
4-10-09.

2. To the First Assistant Resident in Mysore, Pol. 328, dated 7th October 1909.

Requests him to obtain the sanction of the Government of India for the Bill to amend the Chief Court Regulation being passed into law.

3. From the same. : No. 7932, dated the 15th December 1909.

Conveys the sanction of the Government of India to the above bill and requests that a copy of the amending bill as passed into law may be forwarded to his office for information.

33. The bill has been finally adopted by the Legislative Council. The sanction of His Highness the Maharaja has now to be obtained for the bill being promulgated as law. submitted with 2 copies of the bill as approved by the Residency. The Dewan's signature communicating the assent of His Highness the Maharaja to the Bill has also to be obtained (*vide* Rule 52 of the Legislative Council Rules).

T. K. S.
16-12-09.

S. N.
16-12-09.

34. Submitted to Dewan.

S. H
16-12-09.

Submitted to His Highness.

35. With reference to His Highness' order dated 26th December 1908, the bill to amend Section 3 (definition of Full Bench) of the Mysore Chief Court Regulation of 1884 was considered and adopted by the Legislative Council on the 2nd September 1909. The Government of India have sanctioned the amendment in Residency letter No. 7932, dated 15th December 1909. His Highness' sanction may be accorded for promulgating the bill into law.

T. ANANDA ROW.
28-12-09.

Order.

36. Sanctioned.

K. R. W.,
H. H. the Maharaja of Mysore.
30-12-09.

37. Draft of an order directing the publication of the bill in the Gazette is submitted for approval. Copies of the Regulation will be forwarded to the Residency after spare copies are obtained from the Press.

T. K. S.
5-1-10.
S. N.
5-1-10.

38. May Issue.

S. H.
5-1-10.

39. Issue.

C. S. B.
5-1-10.
S. H.
5-1-10.

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4. To the Compiler, Mysore Gazette, No. J. 1828, dated 5th January 1910.

Directs the publication of the bill in the Gazette as Regulation III of 1909.

40. Three hundred and fifty spare copies of the Regulation as published in the Gazette have been received. Hundred of these will be kept here, 100 sent down to the records, 100 to the Curator and 40 to the Chief Court. Copies have to be forwarded to the Residency with usual spare copies.

Three Drafts submitted for approval.

T. K. S.
19-1-10.
S. N.
20-1-10.

41. Issue.

S. H.
20-1-10.

5. No. Pol. 598, dated 25th January 1910, to the First Assistant to the Hon'ble the Resident.

Forwards a copy of the bill passed into law as Regulation III of 1909 with 9 spare copies and to request that a copy may, as usual, be forwarded to His Highness the Nizam's Government.

Proceedings of the Government of His Highness the Maharaja of Mysore, Legislation, January 1910.

Amendment of Section 3 of the Mysore Chief Court Regulation.

FILE No. 15 OF 1908-09.

Letter No. 2222—108, dated the 30th September 1908, from V. A. Rajaratna Mudaliar, Esq., Registrar, Chief Court of Mysore, to K. S. Chandrasekhara Aiyar, Esq., Secretary to Government, General and Revenue Departments.

Serial No. 1

I am directed to request that the definition of 'Full Bench' in Section 3 of the Mysore Chief Court Regulation, 1884, be amended by substituting the words, 'Not less than three Judges of the Chief Court' for the words 'all the Judges of the Chief Court.' There are now four Judges, and in a Full Bench as now constituted there may be no majority.

I am to request that the matter may be treated as urgent, and the amendment passed with as little delay as possible, as a reference to the Full Bench is posted for the 13th proximo.

To the First Assistant to the Hon'ble the Resident in Mysore, Pol. No. 328, dated 7th October 1909.

Serial No. 2

I am directed to forward herewith a copy of a bill further to amend the Mysore Chief Court Regulation, I of 1884, and to observe as follows:—

Under Section 3 of the said Regulation, the term "Full Bench" stands defined as a Bench consisting of all the Judges of the Chief Court. Lately, when it was found expedient to appoint a fourth Judge as a temporary measure and in a case heard before a Full Bench of the 4 Judges some difficulty was apprehended as it was feared that if the Judges were equally divided in their opinion on any point there would be an *impasse*, as neither this Regulation nor the existing Code of Civil Procedure would solve the difficulty. The provisions contained in the earlier part of Section 575 of the Code of Civil Procedure, which requires a decree to be affirmed when there is no majority which concurs in modifying or reversing it, would have been sufficient, but the last paragraph added to that section in 1892, by Regulation VII of 1892, giving preference to the provisions of the Chief Court Regulation (Section 15, clause 3) in cases of conflict, rendered this nugatory. The difficulty apprehended did not, however, actually occur, as three Judges happened to concur in the case, and there was thus a clear majority. Some of the High Courts in British India, which consist of a much larger number of Judges than the Mysore Chief Court, have laid down three as the minimum number required to constitute a Full Bench. The Durbar consider it expedient to adopt this provision, so that if, in any future contingency, the total number of Judges in the Chief Court is increased, there might be a provision in the Statute Book which would prevent the occurrence of the difficulty referred to above.

2. I am to add that the bill was placed before the Legislative Council and was adopted by that body at the meeting held on the 2nd September 1909.

3. I am now to request that the sanction of the Government of India may be obtained for the bill being passed into law.

ENCLOSURES TO SERIAL 2.

Bill to amend the Mysore Chief Court Regulation, 1884.

Whereas it is expedient further to amend the Mysore Chief Court Regulation, 1884, His Highness the Maharaja is pleased to enact as follows:—

1. The following shall be substituted for the last paragraph of Section 3, *viz*:—

"Full Bench" means a Bench consisting of not less than three Judges of the Chief Court.

Statement of Objects and Reasons.

Under orders passed by Government in Notification No. J. 1408—Cts. 114-08-2, dated 18th November 1908, the Chief Court will for some time to come consist of four Judges. Section 3 of the Mysore Chief Court Regulation, 1884, defines a "Full Bench" as a bench consisting of all the Judges of the Chief Court. This definition, if retained, will cause a practical difficulty, as in a Full Bench of four Judges, there may not be a majority to decide any point on which a difference of opinion exists among the members of the Bench.

In the High Courts in India, a Full Bench is not composed of all the Judges of the Courts but of five Judges in Calcutta and of not less than three Judges in the other High Courts. It is therefore proposed to amend the section by defining a Full Bench as a Bench consisting of three Judges.

Proceedings of the Government of His Highness the Maharaja of Mysore, Legislation, January 1910.

Amendment of Section 3 of the Mysore Chief Court Regulation.

Letter No. 7932, from T. B. Copeland, Esq., I.C.S., First Assistant to the Hon'ble the Resident in Mysore, to the Dewan of Mysore, Bangalore, dated the 15th December 1909.

With reference to Mr. Chandrasekhara Iyer's letter No. 328—Pol., dated the 7th October 1909, forwarding a draft bill to amend the Mysore Chief Court Regulation, I of 1884, I am directed to state that the draft bill has been sanctioned on the understanding that the Governor-General in Council retains with regard to it the power and authority vested in him by Article 19 of the Instrument of Transfer. Serial No. 3

2. I am to request that a copy of the Amending Regulation as passed into law may be forwarded to this office for information.

No. J. 1828—Legis. 15-08.

ORDER.—Ordered that the accompanying Regulation further to amend the Mysore Chief Court Regulation, 1884, which received the assent of His Highness the Maharaja on the 30th December 1909, be promulgated for general information. Serial No. 4

Pol. No. 598, to the First Assistant to the Hon'ble the Resident in Mysore, Bangalore.

Adverting to your letter No. 7932, dated the 15th December 1909, conveying the sanction of the Government of India to the draft bill further to amend the Mysore Chief Court Regulation, 1884, and as desired in para 2 thereof, I am directed to forward herewith a copy of the bill passed into law as Regulation No. III of 1909 with nine spare copies and to request that a copy may, as usual, be forwarded to His Highness the Nizam's Government. Serial No. 5

ORIGINAL

1908-09.

FILE No. 15 OF 1908-09.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

PROCEEDINGS OF THE GENERAL AND REVENUE DEPARTMENT.

JUDICIAL AND LEGISLATIVE (LEGISLATION.)

January 1910

(10)

"A" Collection Serial Nos. 1—5.

Amendment of Section 3 of the Mysore Chief Court Regulation, I of 1884.

TABLE OF CONTENTS.

Serial No. of File	Number and date of letter and contents	Reference	Page in A Progs.
1	No. 2222—108, dated 30th September 1908, from the Registrar, Chief Court. Requests that the definition of "Full Bench" in Section 3 of the Mysore Chief Court Regulation be amended by substituting the words "not less than three Judges of the Chief Court" for the words "All the Judges of the Chief Court."	Regulation I of 1884.	1
2	No. Pol. 328, dated 7th October 1909, to the First Assistant to the Hon'ble the Resident in Mysore. Requests him to obtain the sanction of the Government of India for the bill to amend the Chief Court Regulation being passed into law.		1
3	No. 7932, dated the 15th December 1909, from the First Assistant to the Hon'ble the Resident. Conveys the sanction of the Government of India for the bill to amend the Chief Court Regulation being passed into law and requests that a copy of the bill as passed may be forwarded to his office for information.		2
4	No. J. 1878, dated 5th January 1910, to the Compiler, *Mysore Gazette*. Directs the publication of the bill in the Gazette as Regulation III of 1909.		2
5	No. 598, dated 25th January, 1910, to the First Assistant to the Hon'ble the Resident in Mysore. Forwards a copy of the bill passed into law as Regulation III of 1909 with nine spare copies and requests that a copy may, as usual, be forwarded to His Highness the Nizam's Government.		2